

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Implementation of the Local Competition)
Provisions of the Telecommunications Act)
of 1996)

CC Docket No. 96-98

Interconnection between Local Exchange)
Carriers and Commercial Mobile Radio)
Service Providers)

CC Docket No. 95-185

PETITION FOR RECONSIDERATION AND CLARIFICATION

Kalida Telephone Company, Inc. (Petitioner) hereby submits this petition for reconsideration and clarification of the First Report and Order (Order),¹ and requests that the Commission reconsider the requirement that local exchange carriers (LECs) pay one-way paging carriers terminating compensation for traffic that originates on a LEC's network. Petitioner is a small incumbent LEC serving about 1300 subscriber lines in a rural area of Putnam County in northwest Ohio. Petitioner will be adversely affected by the Order in that it is interconnected to a paging company. Petitioner did not participate in either proceeding due to its reliance on representation by the United States Telephone Association and National Telephone Cooperative Association, and did not want to duplicate their efforts or burden the Commission. For the reasons set forth herein, Petitioner requests that the Commission reverse its decisions to require "mutual" or "reciprocal" compensation to paging providers and that will require LECs to provide

¹*Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 et al., released August 8, 1996.

terminating facilities to paging providers at no charge. Rule 51.709(b).

NATURE OF ONE-WAY PAGING SERVICE MANDATES TREATMENT DIFFERENT FROM TWO-WAY CMRS PROVIDERS

Paging service generally consists of non-interactive one-way traffic where the paging company only terminates calls that originate on other networks (landline, wireless). The vast majority of paging end-users simply cannot originate calls with his or her wireless unit, much less interact with the calling party.² In fact, by Commission Rule some of the paging licensees to which LECs will now have to pay terminating compensation under new Rule 51.711 can only provide a one-way service.³ The only paging company that Petitioner is aware of that promotes a current offering of two-way paging is SkyTel, and even that appears to be an extremely limited non-interactive offering. According to SkyTel's service description, the only time that a paging end-user uses a paging unit to originate a message is when the pager is linked to a computer.⁴ Even then, the message from the SkyTel subscriber apparently only leaves SkyTel's network if the page to the subscriber was sent via electronic mail. In all other situations, the original calling party must make another call to the paging provider to retrieve any response to his or her original call. Corroborating the conclusion that the traffic is substantially all one-way is the Personal Communications Industry Association, which reported at the beginning of 1995 that there were

²In its First Report to Congress under the *Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, the Commission acknowledged at page 12 the limited nature of paging service by noting "paging service consists mostly of momentary signals rather than continuous two-way conversation."

³See 47 C.F.R. Section 90.494.

⁴See World Wide Web at <http://www.skytel.com/products/st2way.html>.

24.5 million subscribers to one-way paging service, and **no** two-way paging subscribers.⁵

Although there may be plans to offer new forms of two-way paging using the recently auctioned narrowband personal communications licenses, Petitioner is not aware of any such offering today.

The Commission should recognize the fundamental difference between two-way wireless services and paging services. Two-way wireless services (e.g., cellular, PCS, ESMR) are each provided over a network that permits end-users on that network to call among themselves.

Although interconnection with a LEC increases the number of customers that the wireless customer can call or be called by, the two-way interactive wireless licensee can provide its customers with a service irrespective of LEC interconnection. In other words, the value of two-way wireless service may be enhanced by LEC interconnection, but it has an inherent value to its customers as a stand alone service. Indeed, the Commission's recognition of this added value and the local carrier status of cellular licensees was the force behind the Commission's initial adoption of its policy regarding mutual compensation of cellular carriers.

In stark contrast, paging providers essentially act as tetherless answering services. With the extremely few exceptions that are provider- and paging network-specific, paging end-users cannot call among themselves and cannot originate calls from their paging units to other networks. Like a traditional answering service, the paging provider has nothing to sell without interconnection to some two-way system which can originate calls bound for the paging end-users, and no value without that interconnection or without another network on which the paging end-user can return the call. Once such interconnection does provide a means to leave a message,

⁵PCIA 1995 PCS Technologies Market Demand Forecast Update 1994-2005, found at <http://www.pcia.com/mktdmd.htm>.

the paging company has a service to sell. The nature of the service provided and absolute need for interconnection by a paging licensee with a two-way interactive network are thus fundamentally different than interconnection between a LEC and another provider of telephone exchange service (e.g., cellular, PCS). In the same manner that LECs are not required to compensate answering service bureaus for delivering messages to its customers, LECs should not be required to compensate paging providers simply because the message is delivered over radio waves. At a minimum, the Commission should not require compensation to traffic terminated on one-way paging systems.

THE COMMISSION HAS IGNORED ITS POLICY OF SEEKING TO HAVE THE COST CAUSER PAY

The fundamental difference between two-way and one-way traffic highlights a given that the Commission failed to recognize -- **the only reason why a customer subscribes to paging service is to be called.** This desire to be called in such a limited fashion (whether or not otherwise reachable by landline or wireless telephony) makes paging end-users the cost-causers of the paging network; without that need, the paging network would not exist. Yet under the Order, the use of total element long-run incremental cost could result in LECs paying for all of the construction and operation costs of paging networks. After all, what use does any one-way system have except to broadcast calls that originate on a two-way system? Under the costing and pricing policies adopted by the Commission and imposed on paging interconnection, it would appear that the LECs might conceivably be required to pay for that entire system. The Commission should reconsider its conclusion, and continue to impose the costs caused by the paging end user by re-affirming the current interconnection rate structure.

Petitioner believes that its interconnection rate structure is typical, and reflects the desire by the end-user to be called. Currently, Petitioner charges paging providers for interconnection facilities at a flat-rate of \$52.23 per trunk (there are no usage-sensitive charges), which are presumably recovered from the cost-causing paging end-user. The current structure is thus analogous to reverse billing or collect calling where the called party has previously agreed to pay the charges. Beyond a call to treat all CMRS identically, there has been no showing that the current interconnection structure is unreasonable or foreclosed by the Act or other law.

The Commission should recognize this cost causative relationship and reconsider the need for “mutual” or “reciprocal” compensation with paging providers or for LECs to pay for the facilities extended to paging providers.

SECTION 251(b)(5) DOES NOT REQUIRE THAT LECs COMPENSATE PAGING PROVIDERS

The Commission should reconsider its interpretation of 47 U.S.C. Section 251(b)(5) as requiring reciprocal compensation to be provided to paging providers for terminating traffic that originates with LECs. As illuminated by the arbitration pricing standard established for the transport and termination of traffic, the obligation created by Section 251(b)(5) only applies where traffic is being interchanged between two networks, each of which is capable of originating traffic. Section 252(d)(2)(A) states

For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless--

- (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier . . . (emphasis added)

If Section 251(b)(5) is read to apply to LEC/paging licensee interconnection, a State commission will literally be unable to apply this Congressional standard in any arbitration since the networks of the vast majority of paging providers cannot originate traffic for termination on the interconnected LEC's network. Congress clearly structured Sections 251(b)(5) and 252(d)(2)(A) to apply to two interconnected networks that can both originate calls. The Commission should reconsider its interpretation of Section 251(b)(5) and reconcile these two Sections by excluding paging providers from the reciprocal compensation obligation imposed upon LECs by Section 251(b)(5).

**COMPENSATION WITH ONE-WAY PAGING PROVIDERS CANNOT BE
"MUTUAL" OR "RECIPROCAL"**

Because of the difference outline above, there can be no "mutual" or "reciprocal" compensation between LECs and one-way paging licensees. With the possibility of the de minimis situations discussed above which would be limited to only certain, identifiable providers and networks, paging customers do not originate traffic on the paging company's network for termination on the LEC's network. All of the end-user traffic will flow in one direction -- from the LEC end-user to the paging end-user. In contrast, the dictionary meaning of "mutual" is "directed and received in equal amount."⁶ Similarly, "reciprocal" means "concerning each of two or more persons or things." *Id.* The common meaning that must be prescribed to "mutual" as used in Rule 20.11 and "reciprocal" in Section 251(b)(5) is violated by requiring LECs to pay on what is clearly "non-mutual" traffic. As such, the Commission should reconsider and reverse its decision to unreasonably expand the common meaning of "reciprocal" and "mutual" to encompass

⁶American Heritage Dictionary, Second College Edition (1982).

interconnection for purposes of one-way traffic.

THE COMMISSION FAILED TO CONSIDER UNIVERSAL SERVICE ISSUES IN MANDATING “MUTUAL COMPENSATION” FOR PAGING PROVIDERS

Like the other incumbent LECs in Ohio, Petitioner must offer local telephone service that has no usage-sensitive component (flat-rate service), a rate and rate structure that was set to achieve universal service objectives. For Petitioner’s residential customers, that process resulted in a \$4.95/month charge for one-party service. The flat-rate interconnection charges imposed upon paging providers are a part of an overall rate structure that supports achieving universal service goals with that flat-rate local service rate. Under that overall structure, the compensation arrangement between Petitioner and any paging company that wants to interconnect is de facto “bill and keep.” Now, however, given the one-way nature of paging traffic, paging providers will have absolutely no reason to agree to maintaining the current “bill and keep” compensation structure. The Commission’s “reciprocal” compensation requirement will now require Petitioner to pay from those flat-rate local service revenue streams a usage-sensitive termination rate without enabling any method of recovery of those new charges.

Petitioner expects that the amount it will have to pay to paging providers will only increase in time due to the already substantial growth in paging being generally experienced,⁷ the amount of spectrum available for use,⁸ and the irrational incentives discussed below that have been created by the compensation structure dictated by the Commission. As amounts paid to

⁷PCIA expects the number of paging customers to grow from the 19 million at the beginning of 1995 to 36.8 million by 1998. See <http://www.pcia.com/mktdmd.htm>.

⁸See Commission Report at p. 11 (detailing spectrum that can now be used to provide paging service); p. 12 (“this relatively small amount of spectrum easily accommodates all 27.3 million subscribers and could accommodate several times that”).

paging companies increase, pressure will be placed on LECs to move to usage-sensitive local rates or other usage-sensitive methods that will permit the LECs to recover these new costs from the calling party. Such a change in local pricing would be contrary to the studies that have found a linkage between usage-sensitive charges have a detrimental effect on universal service objectives.⁹ Absent some form of usage-sensitive charge, LECs like Petitioner will only be left with subsidizing that paging traffic from revenues derived from other users.

THE COMPENSATION REQUIREMENT CREATES IRRATIONAL INCENTIVES TO CREATE BIZARRE PRICING STRUCTURES AND GENERATE WORTHLESS TRAFFIC

The Commission should reconsider its compensation decision for paging providers due to the irrational incentives that are created in this one-way environment. With this structure, the more traffic a paging customer receives, the less the paging customer should pay in that the cost incurred to serve that customer is being paid by the LEC. At some usage-point, the paging provider may be able to give service away to heavy users, or even pay them to take the service. That treatment should be contrasted with the current, common sense rate structure for paging customers -- the more that a customer is paged, the more the customer pays.

Moreover, an economic incentive is created to generate spurious, non-communicative traffic. Given that there is no way that Petitioner can be assured that any of the traffic being terminated to the paging provider is actual end-user to end-user traffic, interconnected paging providers could use autodialers to continuously call its system as a means of generating revenue. Where local service is provided by the LEC at a flat-rate, the incentive is clear. A paging provider

⁹See generally *Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network*, CC Docket No. 95-115, Notice of Proposed Rulemaking, FCC No. 95-281, 10 FCC Rcd 13003 (1995).

could subscribe to Petitioner's flat-rate business service and make money by continuously paging its system so long as the terminating charge is at least \$.0000552 per fifteen seconds.¹⁰ This incentive is only heightened by the fact that the LEC must also absorb the costs of the terminating facilities. The Commission should reconsider and reverse its paging provider interconnection decisions in order to eliminate these uneconomic incentives.

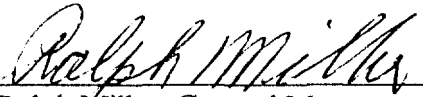
**THE ORDER IS AMBIGUOUS AS TO COMPENSATION RESPONSIBILITIES
AND MUST BE CLARIFIED**

The Order ostensibly places any responsibility for compensating the paging provider upon the LEC which is interconnected to the paging provider. However, that interconnected LEC's end-users may not have originated the call terminated to the paging company. For example, Petitioner has extended area local service from eight (8) exchanges operated by other LECs that permit their end-users to terminate calls to the paging carrier interconnected with Petitioner. Petitioner should not have any obligation to compensate any paging provider for calls that originate from any calling party that is not an end-user of Petitioner. This same fundamental issue arises with any call made to originate a page, which would include toll and "1-800" calls. Indeed, with the latter, the paging provider has typically procured "1-800" service from an interexchange carrier for the benefit of those paging customers who wish to subscribe (in effect, another reverse billing election made by the paging customer). The Commission should clarify that whenever a call does not originate on the network of the interconnected LEC (e.g., the call

¹⁰\$6.05 per month for flat-rate business service plus \$3.50 federal EUCL, all divided by number of fifteen (15) second periods per month.

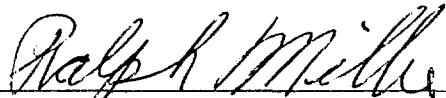
only passing through the interconnected LEC), it is not responsible for paying the CMRS provider any terminating compensation.

KALIDA TELEPHONE COMPANY, INC.

By: 
Ralph Miller, General Manager
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STATEMENT OF VERIFICATION

I have read the foregoing and, to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on September 27, 1996.

A handwritten signature in cursive script, reading "Ralph Miller", is written over a horizontal line.

Ralph Miller, General Manager
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CERTIFICATE OF SERVICE

I, Jane A. Flanakin, hereby certify that the foregoing "Petition for Reconsideration" and "Statement of Verification" in CC Docket No. 6-98 have been served by first class U.S. mail this 30th day of September, 1996 to the parties on the attached list.


Jane A. Flanakin

September 30, 1996

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